

# **Capability Policy (Performance Improvement)**



**ORGANISATIONAL DEVELOPMENT DIVISION**

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# Version Control

This document is intended for:

- Council staff only    School-based staff only    Council & School-based staff

Version	Key Changes	Approved By

This document may be reviewed and amended at any time and without consultation in response to legal requirements or in response to an organisational requirement and where the changes do not reflect a fundamental change or affect the spirit or intent of the document.

## Contents

1. Policy Statement .....	3
2. Definition of Capability.....	3
3. Scope .....	4
4. Expectations and Responsibilities .....	4
5. Day to Day Management.....	5
6. Supportive Action .....	6
7. Capability Stages .....	7
8. Sustained Performance Period (SPP).....	10
9. Appeals .....	10
10. Sickness Absence and Capability .....	14
11. Probationary Period.....	14
12. The Equality Act 2010 .....	14
Appendix 1: Performance Improvement Plan .....	15
Appendix 2: Flowchart .....	16

# 1. Policy Statement

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- 1.1 The Council will provide employees with as much support and assistance possible to enable them to carry out their duties in an appropriate manner. In order to continue to develop as an organisation it is imperative that employees not only provide a service but constantly look for ways to improve and add value to the organisation.
- 1.2 The behaviour and attitude the Council expects of all employees, is described in the competency frameworks, which should be used in conjunction with day-to-day management and the Performance Coaching Scheme to encourage personal and professional development at every opportunity.
- 1.3 The purpose of this policy is to provide support for employees and managers to achieve satisfactory standards of performance. The Authority is committed to providing appropriate and reasonable support to employees who are unable to reach the standard of performance required.
- 1.4 This policy's purpose is to provide Line Managers with the necessary information in order to:
  - Ensure employees are performing their roles effectively and to deal with those employees not performing, in a fair and consistent manner.
  - Encourage sensitive, realistic and constructive approaches from all concerned when dealing with capability matters.
  - Make every effort to support and retain an employee in line with this policy.
  - Clarify and confirm that the managerial responsibility for resolving capability matters rests with Line Managers, with advice and support from Organisational Development as required.
  - Ensure that capability matters are dealt with efficiently within agreed time-periods (*according to circumstances*) and with clear outcomes at all stages.

# 2. Definition of Capability

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- 2.1 Section 98(3) of the Employment Rights Act 1996 defines 'capability' as the ability of an employee to perform required work to an acceptable standard by reference to skill, aptitude, health or any other physical or mental quality.
- 2.2 The fundamental distinction between capability and misconduct may be expressed simply as 'can't do' as opposed to 'won't do'. The latter implies that the employee has some degree of control, intention and/or choice in the matter; the employee could do better but will not or fails to perform due to their own carelessness, negligence or unwillingness. Cases of misconduct will be dealt with in line the [Disciplinary Policy and Procedure](#).
- 2.3 Issues of health capability are not included in this policy and are covered by the [Attendance Management Policy](#).

2.4 Below are some examples of which procedure would be appropriate in certain circumstances:

Issue	Procedure
Poor attendance (including sickness)	Attendance Management Policy
Poor performance due to a poor attitude	Disciplinary Policy and Procedure
Persistent short term ill-health, where the Line Manager suspects that the absence is not genuine	Disciplinary Policy and Procedure & Attendance Management Policy
The reason(s) for incapability are related to misconduct e.g. secondary employment	Disciplinary Policy and Procedure
Consistent failure to perform duties to an acceptable standard	Capability Procedure

### 3. Scope

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- 3.1 This policy applies to all employees of the Council with the exception of the Head of Paid Service, the Monitoring Officer, the Section 151 Officer, the Head of Democratic Services and those who are defined by Regulations (which may be amended from time to time) as a Chief Officer or Deputy Chief Officer.
- 3.2 School based employees under the delegated powers of the Governing Body are subject to a separate procedure.

### 4. Expectations and Responsibilities

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#### 4.1 Manager

- Have regular performance coaching meetings with employees about any areas of concern in relation to skills, attitude and aptitude at work. An employee should expect to receive informal advice and guidance on areas of improvement as part of the normal working relationship. Such information should be recorded as part of regular supervision meetings.
- Ensure that effective recruitment, induction, performance coaching, training and development arrangements exist so that employees are properly supported in meeting the requirements of their job.
- Managers need to be prepared and ready to have difficult conversations with their team members.
- Clearly communicate to their employees, verbally and in writing, any fundamental change in the requirements of the job and provide any additional support and guidance required.
- Ensure that employees' workloads are **reasonable** and take steps to address any related issues.
- Ensure that if new standards are set, they are reasonably attainable for employees.
- Ensure that all employees are aware of the Council's Corporate Competency Framework, and the responsibilities/level that apply to their role.

- Maintain confidentiality and not divulge any details of unsatisfactory performance to any unauthorised person.
- Be open to the concerns of their employees.

4.1.1 Heads of Service and Corporate Directors are responsible for ensuring the consistent application of this policy/procedure and have overall responsibility for ensuring that managers are appropriately trained to deal with performance matters and for managing and/or overseeing all stages of the policy. Managers will be failing in their responsibilities if they do not address issues of capability amongst their employees.

4.1.2 **No formal action will be taken against an accredited Trade Union representative under this Policy until the Regional Trade Union officer has been informed.**

#### 4.2 **Employee**

- Undertake the duties of their post to the very best of their abilities and to meet the requirements of the job.
- Look for ways to improve their contribution to the ambitions of their service and the Council as a whole.
- Actively engage in training, development, support and guidance.
- Participate fully in activities such as the Performance Coaching Scheme to establish the needs of the post and monitor performance in line with the Council's Corporate Competency Frameworks.
- Inform managers of any concerns with regard to tasks set or workload issues as early as possible.

#### 4.3 **Organisational Development (OD)**

- Provide advice and guidance to managers to support with the management of each stage of the process.
- Attend all formal meetings.
- Provide template letters for each stage of the process.

## **5. Day to Day Management**

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5.1 **Before embarking on this procedure, you should be satisfied that your employee has:**

- Completed their probationary period.
- Received an appropriate induction to their job (whether they are new to the Authority or new to the job).
- Appropriate qualifications/training and skills to enable the employee to undertake the role.
- The appropriate level of resources (e.g. IT equipment) to enable them to do the job.
- Had regular performance coaching meetings and that any agreed support has been put in place.

- 5.2 Remember that there are many ways in which poor performance can be identified. Examples include, but are not limited to:
- Targets not being met.
  - Complaints from colleagues or customers.
  - Poor attitude, behaviour and lack of commitment.
  - Line-managers and colleagues covering the responsibilities of the employee.
- 5.3 Once it has been established that there is a specific concern with the workplace performance of an employee, consideration must be given at the earliest opportunity to what support can be given to assist the individual to overcome the matter.
- 5.4 Discussions should take place at normal regular performance coaching meetings. If, however, the issue is identified at a time when a regular meeting is not planned, a specific meeting may need to be arranged. This initial support should be regarded as the informal day-to-day process of maintaining an acceptable standard of work and may take the form of one or more of the following; performance coaching, supervision, training and general encouragement and motivation of the employee.
- 5.5 If the initial support does not resolve the matter and an unacceptable standard of work is occurring on a persistent and regular basis, the manager should inform the employee that they intend to initiate the stages of the capability policy, and provide a copy of the capability policy to the employee.

## 6. Supportive Action

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- 6.1 If the day to day management has not addressed the performance matters and the manager believes that there is a more persistent or more serious capability matter, they should arrange a meeting with the employee.
- 6.2 During the meeting the manager will discuss the performance matters to determine a way forward to improve performance. The line manager and the employee will attend the meeting.
- 6.3 **Performance Improvement Plan**  
The meeting will provide the opportunity to agree a Performance Improvement Plan to support the employee to achieve the required standard for performance. This would involve setting agreed improvement goals and developing targets, which must be achieved within a specified time period. The performance improvement plan will also detail any support, coaching, mentoring or training required to provide support to the employee. A template for the performance improvement plan can be found at [Appendix 1](#). This plan will set the review period within which an improvement in performance is required.

#### 6.4 **Review Periods**

Must be **reasonable** in length, depending on the nature of the job. In a job where there are few and simple tasks, a period of a few days may be reasonable, particularly where the performance matter relates to a task which is fundamental to the job and emerges in the early stages of appointment. Where the job is complex, and improvements cannot be assessed over a short period, a review period of several weeks, or longer, may be necessary.

#### 6.5 **Notes**

The manager should make a note of the meeting. The performance improvement plan should be agreed at the meeting and should be signed by the employee to evidence that they agree to the content of the plan. Unreasonable refusal to sign the plan will not prevent the plan remaining a live document and the individual continuing to be supported towards and assessed against its requirements.

#### 6.6 **Supportive Action Review Meeting**

At the end of the agreed review period a meeting will be arranged to review the progress made by the employee. The manager and the employee will attend the meeting.

6.7 The manager will review progress against the performance improvement plan during the review and the employee will also have the opportunity to provide feedback.

6.8 If the manager takes the decision that performance has improved to the required standard, no further action will be necessary. The manager must inform the employee of the satisfactory outcome of the review in writing. It should be noted at this stage, however, that it is expected that the individual will sustain this level of performance and the manager should continue to hold regular performance management meetings with the individual to discuss their ongoing performance.

6.9 Where performance does not improve, or where there is some improvement but the required standard is still not reached, the manager may consider a further review period or consider action that is more formal.

6.10 Where there has been no sustained and significant improvement, the manager will take the decision to progress to the first stage of the formal procedure of the policy and a meeting will be arranged.

## **7. Capability Stages**

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7.1 If performance matters do not improve to the required standards during these stages, the following sanctions will be issued:

- **First Stage – Written Warning (live for a period of 9 months)**
- **Second Stage – Final Written Warning (live for a period of 12 months)**
- **Third Stage – Consideration of options including dismissal**

## 7.2 **First and Second Stage Meeting**

A meeting will be arranged and attended by the manager, employee and Organisational Development (OD). The employee will have the right to be accompanied at the meeting by a Trade Union representative/work colleague. The meeting will follow the same process as the supportive action meeting and the manager will:

- Discuss the performance matters in detail with the employee and confirm the standard of work performance expected from the employee in the area(s) under consideration.
- Review all informal measures taken to date.
- Provide the employee with an opportunity to feedback.
- Discuss the way forward and ensure suitable targets and performance improvement plans are drawn up that specify the review period, additional training or supervision required, changes in working arrangements or practices, provision of equipment or facilities, referral to the relevant agencies or any other measures being taken to support the employee to achieve the required standard of performance.
- Set a review date (normally monthly and no longer than every three months) which allows for regularly updating the employee on progress being made and gives the employee a reasonable period of time during which the required improvements must be made.
- Inform the employee that if they fail to reach the required standard during the course of the review period, further formal action may be taken, which will include further escalation through the capability policy.

7.3 The manager should make a note of the meeting. The performance improvement plan should be signed by the employee at the end of the meeting to evidence that they agree to the content of the plan. Unreasonable refusal to sign the plan will not prevent the plan remaining a live document and the individual continuing to be supported towards and assessed against its requirements. Copies of this documentation will be sent to them immediately following the meeting.

## 7.4 **First and Second Stage Review Meeting**

At the end of the agreed review period a meeting will be arranged to review the progress made by the employee. The manager and the employee will attend the meeting. The employee has the right to representation by a work colleague or Trade Union representative. A representative of the OD Division will also attend.

7.5 The manager will formally review progress against the performance improvement plan during the review period in discussion with those present and the employee will also have the opportunity to provide feedback.

7.6 If the manager takes the decision that performance has improved to the required standard, no further action will be necessary. The manager must inform the employee of the satisfactory outcome of the review in writing. It should be noted at this stage, however, that it is expected that the individual will sustain this level of performance and managers should continue to hold regular performance management meetings with the individual to discuss their ongoing performance. The individual will be notified that a 12 month Sustained Performance Period will commence. (Please refer to section 8 of the policy).



- 7.7 Where performance does not improve, or where there is some improvement but the required standard is still not reached, the manager may consider a further review period.
- 7.8 Where there has been no sustained and significant improvement, the manager will confirm that the appropriate disciplinary sanction (written/final written warning) will be issued and a meeting will be arranged to commence the next stage of the policy.
- 7.9 Following the meeting, the decision of the manager will be confirmed in writing to the employee, normally within 5 working days. This will include details of:
- The sanction to be imposed.
  - The area(s) where improvement is required.
  - The level of improvement required and/or required standard to be achieved.
  - The measures that will be made available to ensure that the employee can reach this level, (e.g. training, or supervision).
  - Any other action that will be taken by the manager or employee to help resolve the situation.
  - The consequences if performance does not reach a satisfactory level within the stated review period.
  - The right of appeal.
- 7.10 **Third Stage Meeting**  
The process and format of this meeting will be identical to that of the first and second stages of the Capability Policy (above). Managers chairing third stage meetings must ensure that the employee has been informed that their case is under consideration of various options, including dismissal.
- 7.11 **Third Stage Review Meeting**  
During the third stage review meeting the manager will need to consider the appropriate action. This may involve a further monitoring period, termination of employment or in exceptional circumstances the manager may consider an alternative option. Managers should seek advice from their OD representative when considering the appropriate course of action.
- 7.12 **A further monitoring period**  
An extension of the assistance offered will only be taken if it is considered, in the light of the previous review period, that there is a likelihood that the employee's performance will achieve an acceptable level in the further time period given. It will be made clear that if performance does not reach an acceptable level within the agreed period the employee may be dismissed with appropriate notice. A specified time limit based on the particular circumstances must be issued.
- 7.13 **Termination of employment**  
Where the employee has not met and sustained the required level of improvement in performance, the employee will be dismissed on the grounds of capability due to poor performance.
- 7.14 Unless there are exceptional circumstances put forward by the employee that are considered acceptable, the employee's contract of employment will be terminated.

- 7.15 The decision to terminate employment must be confirmed in writing, informing the employee of the following:
- The fact that they have been given notice of dismissal.
  - **The reason for dismissal.**
  - Confirmation of the date of termination and details of pay in lieu of notice where circumstances dictate (e.g. if the working of the notice risks affecting the service to an unacceptable degree).
  - The employee's right of appeal against dismissal.

## 8. Sustained Performance Period (SPP)

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- 8.1 This will be a 12 month period, effective from the date of the review meeting where the employee is notified that they will not escalate further through the formal stages of the process. This is to ensure that processes undertaken in this policy result in sustained performance improvements for the employee. The manager will inform the employee of this in writing when implementing this period.
- 8.2 During this time the manager must review performance formally as part of regular performance coaching meetings with the employee.
- 8.3 The manager should address any performance matters promptly during the SPP. **If the performance is of a level that justifies returning to the formal stages of the Capability Policy the employee will move directly to the next stage rather than commencing at the beginning.**
- 8.4 If performance is assessed as satisfactory at the end of the review period, the manager should confirm this in writing to the employee. A copy of this letter will be placed on the employee's personal file. It should be noted here that it is the responsibility of the employee to maintain this level of performance without the need for close supervision or personal action plans beyond this process.

## 9. Appeals

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- 9.1 **An employee has the right to appeal against any formal sanction imposed through the Capability Policy.**
- 9.1.1 Appeals can be made against procedural errors and/or the outcome. The grievance procedure will not apply in circumstances relating to this procedure. The appeal process should continue in parallel with, and not delay, any ongoing action under this procedure, including the start of any notice period.
- 9.1.2 An employee, or their representative, wishing to lodge an appeal must notify the **Head of Organisational Development, in writing**, of their intention to do so within **5 working days of receipt of the written confirmation** of the sanction issued/ outcome. This correspondence should state the grounds on which the Appellant is appealing.

## 9.2 Appeals Against Warnings

Where the appeal is in relation to sanctions issued in the first and second stages of the formal process, a Senior Officer (chairperson) from an alternative service area will review the decision will hear the appeal.

The decision of the Senior Officer (chairperson) shall be final. There shall be no further internal right of appeal.

## 9.3 Appeals Against Dismissal

Where the appeal is in relation to dismissal, an Appeals Panel consisting of three elected members, will review the decision taken to dismiss.

The decision of the Members Committee shall be final. There shall be no further internal right of appeal.

## 9.4 APPEALS PROCEDURE - PRELIMINARY MATTERS

All appeals in relation to the Capability Policy will be heard in line with this Procedure.

### 9.4.1 The Appeal will be heard as follows:

- Where the appeal is in relation to sanctions issued in first and second stages of the formal process, a Senior Officer (chairperson) from an alternative service area wherever possible, who will review the decision will hear it. In all cases, the Senior Officer will not have been involved with the detail of the case, the original meeting or decision and where possible will be senior in authority to the person who took the decision to issue the sanction. In addition, an Organisational Development Representative from another operational team who has not previously advised or been involved in the case will attend the hearing to advise the Senior Officer (hereafter referred to as the 'Appeals Panel') and an officer will also be present to take minutes of the hearing.
- Where the appeal is in relation to dismissal, an Appeals Panel consisting of three elected members, will review the decision taken to dismiss.
- The Appeals Panel will be chaired by a Chair of a Scrutiny Committee and in all cases Committee Members will not have been involved with the detail of the case, the original meeting or decision. In addition, the Head of Legal & Corporate Compliance or their nominated representative will attend the hearing and act as Advisor to the Appeals Committee. An officer will also be present to take minutes of the hearing.

### 9.4.2 An Appellant (employee), or their representative, wishing to lodge an appeal must notify the **Head of Organisational Development, in writing**, of their intention to do so within **5 working days of receipt of the written confirmation** of the sanction issued under the Capability Policy. This correspondence should state the grounds on which the Appellant is appealing.

9.4.3 The Appeal will be heard without unreasonable delay and every effort will be made to ensure that it will be held within **20 working days** from receipt of the appellant's written notification.

9.4.4 **Written acknowledgement** of the appeal as submitted will be provided and the Appellant and Respondent (management) will be advised of the following:

- Timeframe in which to submit their '**written statement of case**' in line with this Procedure.
- Notice of the time, date and venue of the Hearing at least 5 working days in advance.
- The parties involved in the Hearing will submit their '**written statement of case**' to the Council's Organisational Development Team by no later than **10 working days** from the date of the original **written confirmation** that the appellant intends to appeal. The statements of case should outline the reasons for the appeal and any evidence on which they intend to rely.
- The Respondent's statement will outline the original facts and details in relation to the capability process undertaken, along with supporting documentation and the reasons for the decision.

9.4.5 The Appellant has the right to be represented by a Trade Union Representative or workplace companion. It is the Appellant's responsibility to make the necessary arrangements for their representative to attend the Hearing.

9.4.6 If the Appellant and/or their representative cannot attend on the proposed date with just cause, an alternative date and time can be suggested which is mutually acceptable and which should normally be within **5 working days** of the original date.

9.4.7 In the event of either party not complying with the pre-conditions relating to the Appeals Procedure prior to the Hearing, then save for acceptable or excusing circumstances, the Appeals Panel may consider the appeal based on the evidence available.

## 9.5 **APPEALS PROCEDURE - THE HEARING**

9.5.1 At the outset of the Hearing, those present will be introduced and the purpose of the hearing and how it will be conducted will be outlined. The Chairperson will also clarify the grounds for appeal and refer to the submitted statements of case.

9.5.2 During the proceedings, the Appeals Panel can determine to adjourn the case, as they consider appropriate in the circumstances.

9.5.3 The order of presentation would normally be the following:

- a) The Respondent Officer(s) will put the management case forward in the presence of the Appellant and their representative relying only on the documents that form part of the written statement of case.

- b) The Appellant and/or representative will have the opportunity to ask questions in relation to evidence submitted by the Respondent Officer(s).
- c) The Appeals Panel will have the opportunity to ask questions of the Respondent Officer(s) at the time they give their evidence.
- d) The Appellant and/or their representative will put the case in the presence of the Respondent Officer(s), relying only on the documents that form part of the written statement of case. The representative may put the employee's case, sum up and respond on the employee's behalf to any view expressed at the Hearing. The Appellant should respond personally to direct questions during the Hearing in order to be able to clarify the facts of the matter.
- e) The Respondent Officer(s) will have the opportunity to ask questions in relation to evidence submitted by the Appellant and/or their representative.
- f) The Appeals Panel will have the opportunity to ask questions of the Appellant at the time they give their evidence.
- g) The Respondent Officer(s) will then have the opportunity to sum up their case if they so wish.
- h) The Appellant or their representative will have the opportunity to sum up their case if they so wish.
- i) The Appellant, their representative, and the Respondent Officer(s) to withdraw.

## 9.6 APPEALS PROCEDURE - DELIBERATION AND CONCLUSION

- 9.6.1 The Appeals Panel, together with any Advising Officer(s), will deliberate in private, only recalling the parties to clear any points of uncertainty upon evidence already given. If recall is necessary, both parties are to return, even if only one is concerned with the point given rise to doubt.
- 9.6.2 The Appeals Panel, in certain cases, could take the decision to adjourn the hearing in order that matters are clarified.
- 9.6.3 The Appeals Panel can announce the decision to the parties personally or reserve their decision. Confirmation of the decision, including the reason(s) for the decision, will normally be provided, **in writing**, within **3 working days** following the decision made by the Appeals Panel.
- 9.6.4 The Appeals Panel decision will be final and this procedure provides the final level of appeal available internally within Blaenau Gwent County Borough Council. There is no further level of internal appeal.

## 10. Sickness Absence and Capability

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- 10.1 If an employee is absent due to illness there may be a requirement for a referral to the Council's Occupational Health provider, ([Occupational Health Management Referral Form](#)) for an assessment and to obtain the relevant information and advice.

## 11. Probationary Period

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- 11.1 This Capability Policy does not apply to employees who are undertaking their probationary period. The probationary period is designed to offer both the employee and employer the opportunity to assess the employee's suitability for the post on a monthly basis and any development needs should be discussed with the individual and any other appropriate officer(s) during this time.

## 12. The Equality Act 2010

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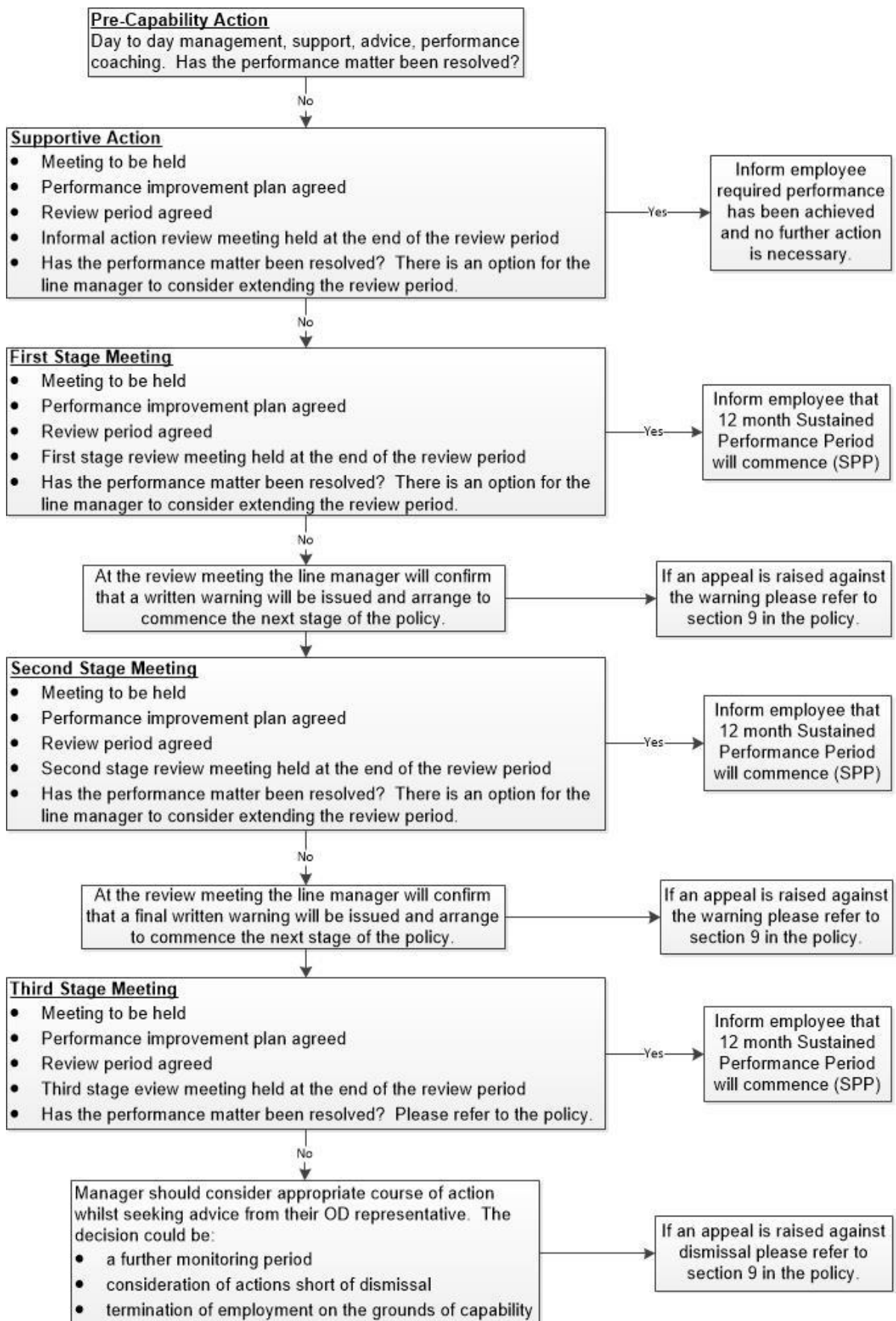
- 12.1 During the application of this policy should a manager become aware that the employee has, is perceived to have or is associated with someone who has, what the Equality Act 2010 defines as a Protected Characteristic, and this is potentially impacting on the employee's performance, further advice should be sought as to any reasonable adjustments that may need to be considered. Advice should be sought from Organisational Development.

## Appendix 1: Performance Improvement Plan

Identified Areas	Assessment Level (select key colour)	Success Criteria	Action: Support/Training required	Timescale for tasks to be achieved	Progress against Targets

<p>Has identified capability gaps, is already making improvements in capability for current and future delivery and is well placed to do so. Is expected to improve further in the short term through practical actions that are planned or already underway and has clear metrics to support progress.</p>	<p>Has weaknesses in capability for current and future delivery and/or has not identified all weaknesses and has no clear mechanism for doing so. More action is required to close current capability gaps and deliver improvement over the medium term.</p>	<p>Significant weaknesses in capability for current and future delivery that require urgent action. Not well placed to address weaknesses in the short or medium term and needs additional action and support to secure effective delivery.</p>
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# Appendix 2: Flowchart



**N.B. Managers should inform employees in writing of the decision at the end of each stage**